

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:)
)
CLEAN BURN FUELS, LLC,) Case No. 11-80562
) Chapter 11
)
Debtor.)

**CONSENT ORDER GRANTING MOTION FOR RELIEF FROM STAY
IN PART AND CONTINUING HEARING**

THIS MATTER came before the Court for hearing on the Motion [Doc # 154] (the “Motion”) filed on June 10, 2011, by Cape Fear Farm Credit, ACA, for itself and as agent/nominee for other lending institutions (collectively, “Lender”) under a certain Credit Agreement with Clean Burn Fuels, LLC (“Debtor”), by and through counsel and pursuant to 11 U.S.C. §§ 361 and 362 and Bankruptcy Rules 4001 and 9014 for relief from stay with respect to substantially all of Debtor’s real and personal property, tangible and intangible, including the Debtor’s ethanol plant located in Hoke County, North Carolina and all related property, inventory (excluding, for purposes of the Motion and this Order, the corn which may be located on the premises), equipment and fixtures (collectively, the “Plant”), all funds on deposit in accounts Debtor has with Branch Banking & Trust Company, Capital Bank and Gateway Bank (the “Deposit Accounts”) and two certificates of deposit at Capital Bank (the “Certificates of Deposit”, and, collectively with the Deposit Accounts, the “Cash Collateral”).

On June 13, 2011, the Court entered its Order shortening notice and expediting the hearing on the Motion to June 21, 2011 [Doc # 164]. Due and proper notice of the Motion and hearing was given to all parties. On June 14, 2011, KATZEN International, Inc. (“KATZEN”) timely filed its Objection to the Motion [Doc # 165]. On June 16, 2011, the Official Committee of Unsecured Creditors (the “Committee”) timely filed its Objection to the Motion [Doc # 170].

At the hearing, Charles M. Ivey III appeared on behalf of the Committee, Gregory B. Crampton appeared on behalf of Perdue Bioenergy, LLC, John A. Northen appeared on behalf of the Debtor, Robert E. Price appeared on behalf of the Bankruptcy Administrator, Julio E. Mendoza, Jr. and Benjamin A. Kahn appeared on behalf of the Lender, Rayford K. Adams III and Brent R. Cohen appeared on behalf of KATZEN. The Court, having considered the statements of counsel, the record and evidence before it, and by and with the consent of the parties as evidenced by their signatures hereon,

HEREBY ORDERS, ADJUDGES, AND DECREES as follows:

1. The automatic stay hereby is modified effective June 21, 2011, to permit Lender to exercise its rights under its loan documents and non-bankruptcy law with respect to the Plant;
2. The automatic stay hereby is modified to permit Lender to exercise its rights against the Post-Petition Cash Collateral and Post-Petition Deposit Account, as those terms are defined in the Court's June 13, 2011 Third Interim Order Authorizing Interim Use of Cash Collateral and Scheduling Further Hearing on the Use of Cash Collateral [Doc # 160] (the "Third Cash Collateral Order"), pursuant to the terms of the loan documents, non-bankruptcy law, and the Third Cash Collateral Order;
3. Debtor, as evidenced by the signature of its counsel below, hereby consents to the appointment of a receiver upon application of the Lender in the North Carolina state courts to take possession of the Plant;
4. Debtor is authorized and directed to immediately surrender the Post-Petition Cash Collateral to Lender;
5. The Lender and any receiver appointed by the state court shall take commercially reasonable steps to protect and, pending further Order by any Court of competent

jurisdiction, the Lender shall be and hereby agrees to be bound by Debtor's existing agreements intended to protect, the confidentiality of KATZEN's trade secrets that are in the possession of the Debtor or otherwise incorporated into the Plant;

6. The Lender shall request in any complaint filed in state court seeking the appointment of a receiver, and in any proposed order submitted to the state court by the Lender, that, pending further Order by any Court of competent jurisdiction, any receiver appointed be bound by Debtor's existing agreements intended to protect, the confidentiality of KATZEN's trade secrets that are in the possession of the Debtor or otherwise incorporated into the Plant;

7. Should all or any part of the Plant be sold or otherwise liquidated by or on behalf of Lender, such liquidation shall be conducted using commercially reasonable efforts to protect the confidentiality of KATZEN's trade secrets that are in the possession of the Debtor or otherwise incorporated into the Plant;

8. KATZEN reserves all rights under the existing agreements between the Debtor and KATZEN;

9. The rights of all parties in interest, including without limitation the Committee, to Challenge the claims and liens of the Lender are preserved as set forth in the Cash Collateral Orders previously entered by this Court;

10. The hearing on the remaining relief requested in the Motion is continued to 10:00 o'clock a.m., July 12, 2011, United States Bankruptcy Courtroom, 302 East Pettigrew Street, Suite 280, Durham, North Carolina.

CONSENTED AND AGREED TO BY:

/s/ Benjamin A. Kahn
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